SPPT Development Sdn Bhd v Worldwide Plantation Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(NCvC)(W)-66–01 OF 2023
NANTHA BALAN, COLLIN SEQUERAH AND FAIZAH JAMALUDIN JJCA
16 JUNE 2025

Civil Procedure — Res judicata — Estoppel — Appellant and respondent entered into sale and purchase agreement ('SPA') in relation to appellant's rights and interest in sub-lease of wakaf lands — Appellant filed first suit seeking termination of SPA — High Court dismissed first suit — Appellant filed second suit to impugn decision of High Court in first suit — High Court dismissed second suit on grounds of res judicata — Whether High Court's order in first suit was valid and enforceable under provisions of law — Whether High Court in second suit was correct in not considering issue regarding consent order of Syariah Court when such issue was not raised in first suit — Whether principle of res judicata was applicable to second suit — Whether issue estoppel and cause of action estoppel applicable — Whether second suit was abuse of court's process — Administration of Islamic Law (Amendment) Enactment 1963 (1382) s 8 — Administration of Islamic Religious Affairs (Terengganu) Enactment 1422H/2001M ss 2, 4(1), (2), (4), 63, 64 & 66

The original owners of the lands ('the said lands') in the Chenderong Concession had made deeds of gift (*wakaf*) in relation to their undivided shares in the Chenderong Concession to the Commissioner for Religious Affairs, Terengganu. Subsequently, the original owners' undivided shares in the Chenderong Concession became vested in the Majlis Agama Islam dan Adat Melayu, Terengganu ('the Majlis'). By virtue of the original lease agreements between one of the original owners and the Majlis with Cindee Developments Sdn Bhd ('Cindee'), their undivided shares in the Chenderong Concession were leased to Cindee for a term of 999 years, but later on, pursuant to the reduction of lease agreement, the Majlis and Cindee agreed for the term to be reduced to 99 years. Cindee subsequently, by way of an assignment, sold all its rights and privileges under the original lease agreements to Tis 'Ata Ashar Sdn Bhd ('TAA'), a company owned by the Majlis, Perbadanan Menteri Besar Terengganu, and Terengganu Incorporated Sdn Bhd. Thereafter, via the principal sub-lease agreement, TAA sub-leased several blocks of the Chenderong Concession ('the leased blocks') to the appellant. In year 1999, pursuant to a sale and purchase agreement ('the SPA') and a deed of assignment ('sub-lease deed of assignment'), both dated 7 December 1999, the appellant sold and assigned to the respondent the whole of the unexpired term of the sub-lease under the principal sub-lease agreement on an 'as is where is' basis for

the sum of RM4m. The dispute between the parties started when the appellant filed Suit 13 in which the appellant argued that the respondent had breached the SPA and consequently, the appellant sought for the termination of the SPA. The High Court dismissed Suit 13 and ordered the respondent to pay the balance purchase price ('the Suit 13 order'), which the respondent complied with. The appellant's subsequent appeals to the Court of Appeal and the Federal Court were all unsuccessful. Then in year 2017, the appellant filed Suit 293 in the High Court seeking, inter alia, to impugn the High Court's order in Suit 13 and for an order that the SPA be terminated. Suit 293 was however dismissed by the High Court on the grounds that the appellant was estopped from re-litigating the suit in respect of the SPA under the doctrine of res judicata. Aggrieved by the said decision, the appellant filed the present appeal. The issues that arose for the court's determination were: (a) whether the order by the High Court in Suit 13 was valid and enforceable under the provisions of the law; (b) whether the consent order between the Majlis and TAA in the Syariah Court ('the Syariah Court consent order'), ought to be taken into consideration by the High Court in Suit 293 — in this regard, para 6 of the Syariah Court consent order stated that the principal sub-lease agreement was null and void because the Majlis as the sole trustee of the Chenderong Concession could not sell or transfer the title in the Chencerong Concession; (c) whether the principle of res judicata was applicable to Suit 293; and (d) whether Suit 293 was an abuse of the court's process.

Held, dismissing the appellant's appeal with costs of RM30,000 to be paid by the appellant to the respondent, subject to allocatur:

(1) Based on the provisions of ss 2, 4(1), (2), (4), 63, 64 and 66 of the Administration of Islamic Religious Affairs (Terengganu) Enactment 1422H/2001M ('the 2001 Terengganu Enactment') as well as s 8 of the Administration of Islamic Law (Amendment) Enactment 1963 (1382), the court agreed with the respondent that the Majlis being the sole trustee of *wakaf* lands in the Chenderong Concession retained full control of the lands and may lease out the lands to third parties. The Majlis received tributes and/or income from leasing of the wakaf lands to third parties. This was borne out by the evidence of the subpoena witness from the Majlis, Puan Nurul Ain bt Nordin (DW1), during the trial of Suit 293 at the Kuala Lumpur High Court (see paras 63–70).

(2) The court found that the appellant did not sell, dispose or transfer the title in the Chenderong Concession to the respondent under the SPA. What the appellant had sold was its rights and interests in the sub-lease of the said lands and this did not breach ss 63 and 64 of the 2001 Terengganu Enactment since the Majlis remained the sole trustee of the Chenderong Concession. Furthermore, the 2001 Terengganu Enactment did not contain any provisions that prohibited the Majlis from leasing *wakaf* lands or generating income from *wakaf* lands. As

such, para 6 of the Syariah Court consent order was clearly wrong. Based on the above, the question of illegality did not arise under both the 2001 Terengganu Enactment and the Syariah Court consent order. Consequently, the court concluded that the principal sub-lease agreement, the principal deed of assignment, and the SPA were valid and enforceable. On totality, the court agreed with the High Court in Suit 293 that the judgment of the High Court in Suit 13 was valid and binding (see paras 80, 83, 93 & 96–100).

(3) In the present case, the learned High Court judge had examined the Suit 13 order as well as the pleadings and cause papers in Suit 293 before arriving at his finding that the appellant could have with reasonable diligence brought the Syariah Court consent order in Suit 13 and raised the issue in Suit 13 (as it did later in Suit 293) and could have contended, that the SPA between the appellant and the respondent was null and void by reason of the Syariah Court consent order. However, it did not do so — either deliberately or due to negligence or inadvertence. Therefore, for these reasons, the court found that the High Court did not fall into error by holding that the Syariah Court consent order ought not to be taken into consideration in Suit 293 (see paras 104–105).

(4) Both the appellant and the respondent were parties to Suit 13, and the appellant in Suit 293 was seeking to challenge the correctness of the High Court's order in Suit 13. The court found that there was no difference in the nature of Suit 13 and Suit 293 since there was no illegality or breach of the 2001 Terengganu Enactment. Premised on issue estoppel, neither the appellant nor the respondent or their privies were entitled to challenge the correctness of the High Court's judgment in Suit 13, which was the final binding judgment on the issue of the termination of the SPA. Additionally, the court found that cause of action estoppel also existed since the appellant's and the respondent's rights and remedies in respect of the SPA had been determined in the High Court's final judgment in Suit 13 and the cause of action had merged into the said final judgment. For the above reasons, the court agreed with the High Court judge that the principle of res judicata was applicable in Suit 293 (see paras 110–114).

(5) The court found that the appellant's action in attempting to re-litigate a matter — which a court had issued a final binding judgment — was an abuse of process of court. It would be contrary to public policy and an abuse of the court's process if litigants were allowed to re-litigate final binding judgments, which they were not happy with. It would result in: (a) the same party being sued more than once for the same cause; (b) there would be no end to litigation; and (c) the court's overburdened machinery would collapse under the weight of such re-litigation by every dissatisfied litigant (see paras 116 & 118).

[Bahasa Malaysia summary

Pemilik-pemilik asal tanah-tanah ('tanah-tanah tersebut') dalam Konsesi Chenderong telah membuat surat ikatan pemberian (wakaf) berhubung dengan saham-saham mereka yang tidak dibahagikan dalam Konsesi Chenderong tersebut kepada Pesuruhjaya Hal Ehwal Ugama, Terengganu. Setelah itu, saham pemilik-pemilik asal yang tidak dibahagikan dalam Konsesi Chenderong tersebut telah diletakkan hak pada Majlis Agama Islam dan Adat Melayu, Terengganu ('Majlis tersebut'). Berdasarkan perjanjian pajakan asal antara salah seorang pemilik asal dan Majlis tersebut dengan Cindee Developments Sdn Bhd ('Cindee'), saham-saham mereka yang tidak dibahagikan dalam Konsesi Chenderong telah dipajakkan kepada Cindee untuk tempoh 999 tahun, tetapi kemudiannya, menurut perjanjian pengurangan pajakan, Majlis tersebut dan Cindee bersetuju agar tempoh tersebut dikurangkan kepada 99 tahun. Cindee kemudiannya, melalui penyerahan hak, menjual semua hak dan keistimewaannya di bawah perjanjian pajakan asal kepada Tis 'Ata Ashar Sdn Bhd ('TAA'), sebuah syarikat yang dimiliki oleh Majlis tersebut, Perbadanan Menteri Besar Terengganu, dan Terengganu Incorporated Sdn Bhd. Selepas itu, melalui perjanjian sub-pajakan prinsipal, TAA memajakkan beberapa blok daripada Konsesi Chenderong tersebut ('blok yang dipajakkan tersebut') kepada perayu. Pada tahun 1999, menurut perjanjian jual beli ('PJB tersebut') dan surat ikatan penyerahhakan ('surat ikatan serah hak sub-pajakan'), kedua-duanya bertarikh 7 Disember 1999, perayu menjual dan menyerahkan kepada responden keseluruhan tempoh sub-pajakan yang belum tamat di bawah perjanjian sub-pajakan prinsipal atas dasar 'sebagaimana sedia ada' dengan harga RM4 juta. Pertikaian antara pihak-pihak bermula apabila perayu memfailkan Saman 13 di mana perayu berhujah bahawa responden telah melanggar PJB tersebut dan akibatnya, perayu memohon penamatan PJB tersebut. Mahkamah Tinggi menolak Saman 13 dan memerintahkan responden membayar baki harga belian ('perintah Saman 13'), yang mana perintah ini telah dipatuhi oleh responden. Rayuan perayu yang seterusnya di Mahkamah Rayuan dan Mahkamah Persekutuan semuanya tidak berjaya. Kemudian pada tahun 2017, perayu memfailkan Saman 293 di Mahkamah Tinggi memohon, antara lain, untuk mencabar perintah Mahkamah Tinggi dalam Saman 13 dan untuk mendapatkan perintah supaya PJB tersebut ditamatkan. Saman 293 bagaimanapun telah ditolak oleh Mahkamah Tinggi atas alasan bahawa perayu dihalang daripada membicarakan semula saman berkenaan PJB tersebut di bawah doktrin res judicata. Terkilan dengan keputusan tersebut, perayu memfailkan rayuan semasa. Isu-isu yang timbul untuk penentuan mahkamah ialah: (a) sama ada perintah Mahkamah Tinggi dalam Saman 13 adalah sah dan boleh dikuatkuasakan di bawah peruntukan undang-undang; (b) sama ada perintah persetujuan antara Majlis tersebut dan TAA di Mahkamah Syariah ('perintah persetujuan Mahkamah Syariah tersebut'), patut diambil kira oleh Mahkamah Tinggi dalam Saman 293 — dalam hal ini, perenggan 6 perintah

persetujuan Mahkamah Syariah tersebut menyatakan bahawa perjanjian sub-pajakan prinsipal tersebut adalah terbatal dan tidak sah kerana Majlis tersebut sebagai pemegang amanah tunggal Konsesi Cherong tidak boleh menjual atau memindahkan hak milik dalam Konsesi Chenderong; (c) sama ada prinsip *res judicata* terpakai bagi Saman 293; dan (d) sama ada Saman 293 adalah penyalahgunaan proses mahkamah.

Diputuskan, menolak rayuan perayu dengan kos RM30,000 yang perlu dibayar oleh perayu kepada responden, tertakluk kepada alokatur:

(1) Berdasarkan peruntukan ss 2, 4(1), (2), (4), 63, 64 dan 66 Enakmen Pentadbiran Hal Ehwal Agama Islam (Terengganu) 1422H/2001M ('Enakmen Terengganu 2001') serta s 8 Enakmen Pentadbiran Undang-Undang Islam (Pindaan) 1963 (1382), mahkamah bersetuju dengan responden bahawa Majlis tersebut sebagai pemegang amanah tunggal tanah wakaf dalam Konsesi Chenderong mengekalkan kawalan penuh ke atas tanah tersebut dan boleh memajakkan tanah tersebut kepada pihak ketiga. Majlis tersebut menerima ufti dan/atau pendapatan daripada pajakan tanah wakaf kepada pihak ketiga. Ini terbukti dengan keterangan saksi sepina daripada Majlis tersebut, Puan Nurul Ain bt Nordin (DW1), semasa perbicaraan Saman 293 di Mahkamah Tinggi Kuala Lumpur (lihat perenggan 63–70).

(2) Mahkamah mendapati perayu tidak menjual, melupuskan atau memindahkan hak milik dalam Konsesi Chenderong kepada responden di bawah SPA tersebut. Apa yang telah dijual oleh perayu adalah hak dan kepentingannya dalam sub-pajakan bagi Tanah tersebut dan ini tidak melanggar ss 63 dan 64 Enakmen Terengganu 2001 memandangkan Majlis tersebut kekal sebagai pemegang amanah tunggal Konsesi Chenderong. Tambahan pula, Enakmen Terengganu 2001 tidak mengandungi apa-apa peruntukan yang melarang Majlis tersebut daripada memajak tanah wakaf atau menjana pendapatan daripada tanah wakaf. Oleh yang demikian, perenggan 6 perintah persetujuan Mahkamah Syariah tersebut jelas salah. Berdasarkan dapatan-dapatan di atas, persoalan kepenyalahan undang-undang tidak timbul di bawah kedua-dua Enakmen Terengganu 2001 dan perintah persetujuan Mahkamah Syariah tersebut. Kesannya, mahkamah membuat kesimpulan bahawa perjanjian sub-pajakan prinsipal, surat ikatan serah hak prinsipal, dan SPA tersebut adalah sah dan boleh dikuatkuasakan. Secara keseluruhannya, mahkamah bersetuju dengan Mahkamah Tinggi dalam Saman 293 bahawa penghakiman Mahkamah Tinggi dalam Saman 13 adalah sah dan mengikat (lihat perenggan 80, 83, 93 & 96–100).

(3) Dalam kes semasa, hakim Mahkamah Tinggi yang bijaksana telah meneliti perintah Saman 13 serta pliding dan kertas kausa dalam Saman

293 sebelum membuat keputusannya bahawa perayu boleh dengan ketekunan yang munasabah membawa perintah persetujuan Mahkamah Syariah tersebut dalam Saman 13 dan membangkitkan isu berkenaan dalam Saman 13 (seperti yang dilakukan kemudiannya dalam Saman 293), dan boleh berhujah bahawa SPA yang ditandatangani oleh perayu dan responden tersebut adalah terbatal dan tidak sah disebabkan oleh perintah persetujuan Mahkamah Syariah tersebut. Bagaimanapun, ia tidak berbuat demikian — sama ada dengan sengaja atau kerana kecuaian atau tidak disengajakan. Oleh itu, atas sebab-sebab ini, mahkamah mendapati bahawa Mahkamah Tinggi tidak terkhilaf dalam memutuskan bahawa perintah persetujuan Mahkamah Syariah tersebut tidak sepatutnya diambil kira dalam Saman 293 (lihat perenggan 104–105).

(4) Perayu dan responden kedua-duanya merupakan pihak-pihak dalam Saman 13, dan perayu dalam Saman 293 berhasrat untuk mencabar ketepatan perintah Mahkamah Tinggi dalam Saman 13. Mahkamah mendapati bahawa tidak terdapat perbezaan dalam sifat Saman 13 dan Saman 293 kerana tidak ada kepenyalahan atau pelanggaran Enakmen Terengganu 2001. Berdasarkan isu estoppel, baik perayu mahupun responden atau privi mereka tidak berhak untuk mencabar ketepatan penghakiman Mahkamah Tinggi dalam Saman 13, yang merupakan penghakiman muktamad yang mengikat mengenai isu penamatan SPA tersebut. Selain itu, mahkamah mendapati bahawa estoppel kausa tindakan juga wujud memandangkan hak dan remedi perayu dan responden berkenaan dengan SPA tersebut telah ditentukan dalam penghakiman muktamad Mahkamah Tinggi dalam Saman 13 dan kausa tindakan tersebut telah digabungkan ke dalam penghakiman muktamad tersebut. Atas sebab-sebab di atas, mahkamah bersetuju dengan hakim Mahkamah Tinggi bahawa prinsip *res judicata* terpakai dalam Saman 293 (lihat perenggan 110–114).

(5) Mahkamah mendapati bahawa tindakan perayu yang cuba untuk membicarakan semula sesuatu perkara — yang mahkamah telah mengeluarkan penghakiman muktamad yang mengikat — adalah penyalahgunaan proses mahkamah. Ia akan bertentangan dengan dasar awam dan merupakan penyalahgunaan proses mahkamah jika pihak-pihak litigasi dibenarkan untuk membicarakan semula penghakiman muktamad yang mengikat yang tidak dipersetujui oleh mereka. Ia akan mengakibatkan: (a) pihak yang sama disaman lebih daripada sekali atas kausa yang sama; (b) tidak akan ada penghujung untuk litigasi; dan (c) jentera mahkamah yang terlalu terbeban akan runtuh di bawah beban perbicaraan semula sedemikian oleh setiap litigan yang tidak berpuas hati (lihat perenggan 116 & 118).

Cases referred to

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189; [1995] 3 CLJ 783; [1995] 3 AMR 2559, SC (refd)

Carl-Zeiss-Stiftung v Rayner and Keeler Ltd and Others (No 2) [1966] 2 All ER 536; [1967] 1 AC 853, HL (refd)

Haji Embong bin Ibrahim & Ors v Tengku Nik Maimunah Hajjah binte Almarhum Sultan Zainal Abidin [1980] 1 MLJ 286; [1979] 1 LNS 24, FC (refd)

Kerajaan Malaysia v Mat Shuhaimi bin Shafiei [2018] 2 MLJ 133; [2018] 3 CLJ 1; [2018] 1 AMR 837, FC (refd)

Lin Wen-Chih & Anor v Pacific Forest Industries Sdn Bhd & Anor [2023] 5 MLJ 422; [2023] 8 CLJ 671; [2023] 6 AMR 561, FC (refd)

Legislation referred to

Administration of Islamic Law (Amendment) Enactment 1963 ss 8, 11

Administration of Islamic Law Enactment 1955 s 78, 78(3)

Administration of Islamic Religious Affairs (Terengganu) Enactment 1422H/2001M ss 2, 4(1), (2), (4), 63, 64, 66, 66(2)

Concessions Enactment (Terengganu) No 3 of 1344

Islamic Wakaf Validating Enactment No 10/1972 s 2(3), 3

Appeal from: Civil Suit No WA-22NCvC-293–06 of 2017 (High Court, Kuala Lumpur)

David Gurupatham (with Mirdhulekha Muralidharan and Eirena Hoon Tian Ping) (David Gurupatham & Koay) for the appellant.

Sri Dev Nair (with Aznim bt Azhar and Nabilah Aryssa bt Mohamad Askandar) (Raja Nor & Su Lynn) for the respondent.

Faizah Jamaludin JCA:

A. INTRODUCTION

[1] This is an appeal by the appellant, SPPT Development Sdn Bhd, against the decision of the Kuala Lumpur High Court ('KL High Court') in dismissing its action against the respondent, Worldwide Plantation Sdn Bhd, in Civil Suit No WA-22NCVC-293–06 of 2017 ('Suit 293').

[2] The appellant is the sub-lessee of the lands forming part of the Chenderong Concession located in the state of Terengganu Darul Iman, under the principal sub-lease agreement between it and Tis 'Ata Ashar Sdn Bhd.

[3] In 1999, pursuant to a sale and purchase agreement dated 7 December 1999 between the appellant and the respondent ('SPA'), the appellant sold to

the respondent the whole of the unexpired term of the sub-lease under the principal sub-lease agreement on an 'as is where is' basis for the sum of the RM4m. The terms 'lands', 'Chenderong Concession', 'original lease agreements' and 'principal sub-lease agreement' are defined in the body of this judgment.

[4] In 2001, the appellant filed Suit No 22–13–2001 ('Suit 13') in the Kuala Terengganu High Court ('KT High Court'), where it sought, inter alia, for a declaration that the SPA be terminated and that it is entitled to forfeit the deposit in the sum of RM400,000 paid by the respondent under the SPA, and for an order that vacant possession of the said lands be re-delivered to the appellant.

[5] After four non-consecutive days of full trial, the KT High Court in its judgment in Suit 13 dated 9 December 2012, found that the appellant failed to prove that the respondent had breached the SPA. The court dismissed the appellant's claim for termination of the SPA and ordered the respondent to pay the balance purchase price of RM500,000 on or before 8 January 2013, which the respondent duly did. The appellant's appeal against the KT High Court's order in Suit 13 was struck out by the Court of Appeal and its application for reinstatement of the appeal was dismissed. Its application for leave to appeal to the Federal Court against the decision of the Court of Appeal was also dismissed.

[6] The appellant then, in 2017, filed Suit 293 at the KL High Court seeking, inter alia, to impugn the KT High Court's order in Suit 13 and for an order that the SPA be terminated.

[7] The KL High Court in its decision dated 22 December 2022 dismissed the appellant's action in Suit 293 with costs. The dismissal was, principally, on the grounds that the appellant is estopped from re-litigating the suit in respect of the SPA under the doctrine of res judicata.

[8] The appellant being dissatisfied with the KL High Court's decision filed this appeal, where it sought for this court pursuant to the principles of appellate intervention to set aside the decision of the KL High Court and allow its claim in Suit 293.

B. MATERIAL BACKGROUND FACTS

Chenderong Concession

[9] The subject matter of Suit 13, Suit 293 and this appeal are lands known as Block 4 (sublot 71, 72 and 73) and Block 6 (sublot 67) of the Chenderong Concession ('the said lands').

[10] The Chenderong Concession was a concession made pursuant to the Concessions Enactment (Terengganu) No 3 of 1344 by way of a Royal Grant dated 25 February 1906 by Sultan Zainal Abidin of Terengganu to his daughter, Tengku Nik Maimunah Hajjah bt Sultan Zainal Abidin ('Tengku Maimunah') and her husband, Tengku Ngah bin Tengku Abdul Rahim ('Tengku Ngah'), where His Highness conveyed onto them exclusive rights in perpetuity over the area of land referred to as the 'Chenderong Concession'.

[11] The Chenderong Concession measures approximately 63,448 acres. It is made up of parcels of land hereditaments lying to the right side of Sungai Cherol in the District of Kemaman, the boundaries whereof are defined (when facing upstream) as following down the Sungai Cherol and the Sungai Chenderong and then entering the Sungai Burong following the Bandi Boundary into Sungai Sendok up to Sungai Rong Kechil and then upstream to the Pahang boundary, then following the water-shed up to the bank of the Sungai Cherol, which land and hereditaments lie on the right side of both the Sungai Cherol and Sungai Teraja when facing upstream.

[12] Tengku Ngah died in 1937. Under the Islamic law of distribution, 4/8 share in the Chenderong Concession became vested in his wife, Tengku Maimunah, and the other 4/8 share — 1/8 share became vested in Tengku Maimunah and 3/8 became vested in Tengku Ngah's brother, Tengku Chik bin Tengku Abdul Rahim ('Tengku Chik').

Wakaf of the Chenderong Concession

[13] On 22 February 1941, Tengku Chik made a deed of gift of his 3/8 undivided share in the Chenderong Concession in favour of the Commissioner for Religious Affairs, Terengganu ('the Commissioner').

[14] On 13 June 1961, Tengku Maimunah made a deed of gift to the Commissioner of her 5/8 undivided share in the Chenderong Concession.

[15] Both the deeds of gift by Tengku Chik and Tengku Maimunah of their respective undivided shares in the Chenderong Concession to the Commissioner are collectively referred to as the 'wakaf'. Details of the *wakaf* of their shares in the Chenderong Concession are as below:

Date	Name	Amount of share
22 February 1941	Tengku Chik	3/8
13 June 1961	Tengku Maimunah	5/8

[16] The Administration of Islamic Law (Amendment) Enactment 1963 (1382) ('the Terengganu Enactment No 9 of 1963'), which came into force on 23 December 1963, amended the Administration of Islamic Law Enactment 1955 (1375) ('the Principal Enactment'). The Terengganu Enactment No 9 of 1963 established the Majlis as a body corporate under the name of 'Majlis Ugama Islam dan Adat Melayu'. By virtue of s 11 of the Terengganu Enactment No 9 of 1963, s 78 of the Principal Enactment was amended where, among others, the word 'the Commissioner' in sub-s (3) was amended to the word 'Majlis'.

[17] By virtue of the Terengganu Enactment No 9 of 1963, Tengku Chik's 3/8 and Tengku Maimunah's 5/8 undivided shares in the Chenderong Concession became vested in the Majlis Agama Islam dan Adat Melayu, Terengganu ('the Majlis').

[18] On 22 July 1972, the Terengganu State Legislative Assembly passed an Enactment known as the Islamic Wakaf Validating Enactment No 10/1972 ('Wakaf Validating Enactment'), declaring that family *wakafs* made in accordance with Islamic law are not to be held invalid merely because of certain specified grounds. The Wakaf Validating Enactment came into force on 8 August 1972.

[19] Pursuant to s 3 of the Wakaf Validating Enactment, the *wakaf* created by Tengku Chik and Tengku Maimunah were both statutorily validated with retrospective effect to the dates of their creation.

[20] The Federal Court in *Haji Embong bin Ibrahim & Ors v Tengku Nik Maimunah Hajjah binte Almarhum Sultan Zainal Abidin* [1980] 1 MLJ 286; [1979] 1 LNS 24 held that the Wakaf Validating Enactment had retrospective effect and applied to the *wakaf* created by Tengku Nik Maimunah of her share of the Chenderong Concession. The Federal Court further held that the *wakaf* was valid because: (a) it dealt not only with the income or profits from the Chenderong Concession by also the land itself; and (b) the disposition to strangers by Tengku Maimunah was valid under Islamic law and was saved by s 2(3) of the Wakaf Validating Enactment.

Original lease agreements

[21] On 7 June 1961, the Commissioner entered into a lease agreement with Cindee Developments Sdn Bhd ('Cindee'), whereby 3/8 undivided shares in the Chenderong Concession, gifted by Tengku Chik to the Commissioner, was leased by the Commissioner to Cindee for 999 years.

[22] Also, on 7 June 1961, Tengku Maimunah entered into a lease agreement with Cindee, where her 5/8 undivided share in the Chenderong Concession was leased to Cindee for a term of 999 years.

[23] The lease agreements between the Commissioner and Cindee, and between Tengku Maimunah and Cindee are collectively referred to as 'the original lease agreements'.

[24] In 1985, by a letter dated 7 November 1985 addressed to the State Secretary of Terengganu, Cindee irrevocably waived, revoked, disclaimed all its rights, interest, title and privileges in the Chenderong Concession under the original lease agreements.

[25] By an agreement dated 31 December 1985 between the Majlis and Cindee ('the reduction of lease agreement'), the Majlis and Cindee agreed that the term of the lease of the Chenderong Concession in the original lease agreements be reduced from 999 years to 99 years. Pursuant to the reduction, the term of the lease will expire on 31 December 2084.

[26] By a sale and purchase agreement dated 31 December 1986 ('the Cindee-TAA agreement'), Cindee by way of an assignment sold all its rights and privileges in the Chenderong Concession under the original lease agreements to Tis 'Ata Ashar Sdn Bhd ('TAA').

[27] TAA is a private limited company incorporated on 12 August 1985. A Suruhanjaya Syarikat Malaysia (SSM) company search results dated 6 May 2019, shows that TAA's total issued capital is RM11,000,002 comprising of ordinary and preference shares at the par value of RM1.

[28] The shares in TAA are jointly held by the Perbadanan Menteri Besar Terengganu, the Majlis and Terengganu Incorporated Sdn Bhd in the following percentages:

Name	No of shares	Percentage of shares
Perbadanan Menteri Besar Terengganu	9,300,002	84.54%

Majlis Ugama Islam dan Adat Melayu Terengganu	850,000	7.73%
Terengganu Incorporated Sdn Bhd	850,000	7.73%

Principal sub-lease agreement and principal deed of assignment

[29] In 1990, by a sub-lease agreement dated 23 August 1990 between the appellant and TAA, the appellant sub-leased from TAA the following blocks (collectively referred to in this judgement as the 'leased blocks') of the Chenderong Concession, which area in total measures 38,924.01 acres ('the principal sub-lease agreement'):

Leased blocks	Lot	Area (acre)
1	42, 43 and 76	2,289.21
2	5, 6, 9 and 74	4,597.148
4	71, 72 and 73	3,951.231
6	64, 65, 66 and 67	4,390.623
8A	19, 20, 21, 22 and 23	5,603.391
8B	14 and 24	1,500.212
9	25, 26 and 27	3,952.505
10	28, 29, 30 and 31	4,511.873
11	34, 35 and 36	3,108.824
11A	32	1,061.039
11B	33	1,014.959
12	37 and 38	2,020.798
13B	54, 55, 56, 57, 58, 59, 60, 61, 62 and 63	921.586
Total area (acres)		38,924.01

[30] The sub-lease of the leased blocks under the principal sub-lease agreement will expire on 31 December 2084, ie the date on which Cindee's lease of the Chenderong Concession will expire under the original lease agreements, and the date on which TAA's rights to the rights and interests in the Chenderong Concession acquired under the Cindee-TAA agreement will expire.

[31] Five years later in 1995, pursuant to the principal sub-lease agreement, by a deed of assignment dated 21 November 1995 between TAA, the Majlis and the appellant ('the principal deed of assignment'):

(a) TAA agreed to assign absolutely and directly to and in favour of the appellant all its rights, title, interests, and privileges under the original lease agreements and other equities in and to the said leased blocks upon

A the terms and conditions in the principal deed of assignment; and

(b) the Majlis as the lessor of the Chenderong Concession by way of the original lease agreements gave its consent to the assignment of the leased blocks by TAA to the appellant.

B

[32] The 'leased blocks' are referred in the principal deed of assignment as 'the said property'.

[33] The appellant, in consideration of the principal deed of assignment, in C cl 2 of the said assignment, expressly covenanted to perform, fulfil and observe all and every of the stipulations, covenants and conditions contained in the original lease agreements and/or the principal sub-lease agreement, as revised, modified or amended by the Majlis from time to time and insofar as they are applicable to the appellant.

D

[34] The appellant also expressly declared in cl 3 of the principal deed of assignment that it shall be bound by the terms of the original lease agreements and/or the principal sub-lease agreement and shall indemnify TAA in respect of E any breach of the terms and conditions stipulated therein insofar as it is applicable to the appellant.

SPA and sub-lease deed of assignment

F **[35]** In 1999, pursuant to a sale and purchase agreement dated 7 December 1999 ('the SPA'), the appellant agreed to sell to the respondent and the respondent agreed to purchase from the appellant for the purchase price in the sum of RM4m, all the appellant's rights and interests in and to the said lands for the whole of the unexpired term under the principal sub-lease agreement G subject to the terms of the original lease agreement on an 'as is where is' basis.

[36] Simultaneously with the execution of the SPA, the appellant had executed a deed of assignment dated 7 December 1999 ('sub-lease deed of assignment') in favour of the respondent assigning absolutely to the respondent H all the appellant's rights and interest in and to the said lands.

[37] The respondent made part-payment of the purchase price in the sum of RM3.5m. But it did not pay the balance of the purchase price in the sum of I RM500,000 ('balance purchase price') within the time specified in the SPA. This was because it had sought a variation to the terms of the payment of the balance purchase price and the variation was subject to the approval of the respondent's board of directors.

[38] In a letter dated 1 August 2000, the appellant's solicitors informed the respondent that the SPA was terminated owing to the respondent's failure to the pay the balance purchase price within the stipulated time period. In its reply dated 31 October 2000, the respondent's solicitors replied that the balance of the purchase price was to be by subscription 5% ordinary shares in the respondent company.

Kuala Terengganu High Court Suit No 22–13–2001 ('Suit 13')

[39] In 2001, the appellant filed Suit 13 at the KT High Court against the respondent for the termination of the SPA due to the latter's failure to pay the balance purchase price.

[40] In its judgment delivered on 9 December 2012 after full trial, the KT High Court in Suit 13 ruled that the appellant failed to prove that the respondent had breached the SPA. By an order dated 9 December 2012, the court dismissed the appellant's claim with costs and ordered the respondent to pay the balance purchase price on or before 8 January 2013 ('the Suit 13 order').

[41] As mentioned in section A above, the appellant's appeal against the Suit 13 order was struck out and its application for reinstatement was dismissed by the Court of Appeal. Its application for leave to appeal was also dismissed by the Federal Court.

Kuala Lumpur High Court Civil Suit No WA-22NCVC-293–06 of 2017 ('Suit 293')

[42] In June 2017, the appellant filed Suit 293 for, inter alia, a declaration that the Suit 13 order is null, void and an illegality and must be set aside *ex debito justitiae*; an order that the said the Suit 13 order be set aside *ex debito justitiae*, and the SPA be terminated as it was null, void and an illegal instrument.

[43] The High Court in Suit 293, after a full trial, ruled that the Suit 13 order by the KT High Court is valid and binding and is a final order regularly obtained.

[44] The learned High Court judge found that the appellant's action in Suit 293 was a 'clear-cut case' that the doctrine of res judicata applies and the appellant is estopped from filing its claim again. His Lordship observed that the relief sought by appellant in para 16(c) of its statement of claim in Suit 293, namely that the SPA be terminated as it is null, void and an illegal instrument,

was in fact a relief that had been previously sought by the appellant in Suit 13 and dismissed by the KT High Court after a full trial.

[45] The learned judge held that the appellant's claim was caught by the doctrine of res judicata and this was predicated on the fact that it was an agreed fact in Suit 293 that the KT High Court in Suit 13 had dismissed the appellant's application for termination of the SPA and ordered remittance of the balance of the purchase price of RM500,000 by the respondent to the appellant. His Lordship in para 33 of his grounds of judgment said since it was already an agreed fact before the court that the appellant's application in Suit 13 for the termination of the SPA was not granted, the matter should not be relitigated.

[46] The appellant in Suit 293 pleaded that the KT High Court in Suit 13 ought to have taken into account the consent order between the Majlis and TAA made by Kuala Terengganu Syariah Court on 13 July 2008 ('Syariah Court consent order'). The learned judge in Suit 293 made a finding of fact that the appellant who had knowledge of the Syariah Court consent order had the opportunity to raise the said Syariah Court consent order during the pendency of the trial in Suit 13 but chose not to do so.

[47] His Lordship found that the appellant had mounted a claim in the KL High Court by using the Syariah Court consent order to relitigate the issue after being unsuccessful in the KT High Court, the Court of Appeal and the Federal Court. His Lordship, in para 39 of his grounds of judgment, held that the appellant's action is an abuse of the court's process and should be barred under the doctrine of res judicata and issue estoppel.

[48] For these reasons, the KL High Court dismissed the appellant's claim against the respondent in Suit 293 with costs.

C. THIS APPEAL

[49] The appellant being dissatisfied with the Kuala Lumpur High Court's dismissal of its claim in Suit 293, filed this appeal against the whole of the decision.

The appellant's case

[50] The crux of the appellant's appeal is that the learned High Court judge had failed to consider the pertinent points of all the issues that were raised in Suit 293 and had therefore erred in his judgment.

[51] It is the appellant's case that the KL High Court had erred in law by first,

failing to consider that the said lands is *wakaf* property and by virtue of law the sole trustee of the said lands is the Majlis. The appellant submits that it did not, at all material times, have the authority to transfer, sell and/or dispose the said lands to the respondent. Secondly, by not taking into consideration the jurisdiction of Syariah Court pertaining to Islamic law and Islamic matters and the Syariah Court consent order that had declared, inter alia, that the principal sub-lease agreement is null and void ab initio. Thirdly, there was insufficient judicial appreciation of the evidence by the learned High Court judge, which warrants appellate intervention by this court. Fourthly, by deciding that the appellant's claim in Suit 293 was barred by the principles of res judicata. It is the appellant's case that res judicata does not apply in this case because the nature of the Suit 293, the issues to be decided and the reliefs sought are different from that of Suit 13. Finally, the appellant contends that the learned judge was wrong to find that the appellant had abused the process of court by filing Suit 293 since the cause of action, the issues and the reliefs sought in Suit 293 are different from that in Suit 13.

The respondent's case

[52] The respondent's defence in Suit 293 is primarily, that the SPA is valid and subsisting, based on the decision of the KT High Court, after a full trial, in Suit 13 to dismiss the appellant's claim for termination of the SPA and to uphold the said SPA by ordering the respondent to pay the balance purchase price. Secondly, that the Suit 13 order was not in breach of and does not contravene the laws under the relevant Terengganu Enactments that deal with the creation of *wakaf* property, including the said lands.

[53] Learned counsel for the respondent submits that the learned High Court judge was correct to find that res judicata applied in Suit 293 since the appellant had filed a similar suit in Suit 13 at the KT High Court seeking, inter alia, similar reliefs.

[54] As regards the Syariah Court consent order, the respondent submits that that the KL High Court was correct to find that the appellant was estopped from raising the Syariah Court consent order in Suit 293 since the appellant knew about the Syariah Court consent order and had the opportunity to raise the said order during the pendency of the trial in Suit 13, but chose not to do so.

[55] Further, the respondent contends that the learned High Court judge had correctly found that the Suit 13 order had merged all the appellant's and the respondent's rights and liabilities arising out of the SPA and the said lands. Learned counsel for the respondent submits that since the appellant's and the respondent's rights and liabilities had been settled in the final judgment in Suit

13, it would be an abuse of process for this court to permit the appellant to 'come through the back door' to this court and claim rights under the SPA and ventilate issues that had been settled and merged in the Suit 13 order.

D. ISSUES

[56] The issues for our determination in this appeal are:

(a) whether the order by KT High Court in Suit 13 is valid and enforceable under the provisions of the law;

(b) whether the Syariah Court consent order ought to be taken into consideration by the KL High Court in Suit 293;

(c) whether the principle of res judicata is applicable to Suit 293; and

(d) whether Suit 293 is an abuse of the court's process.

Issue (a): Whether the order by KT High Court in Suit 13 is valid and enforceable under the provisions of the law?

[57] The appellant contends that the KL High Court had erred in law when it ruled that the Suit 13 order by the KT High Court was valid and binding. This is because the KT High Court judge failed to take into account that the said lands is *wakaf* property and, by virtue of law, a *wakaf* property's sole trustee is the Majlis.

[58] It is the appellant's case that the principal sub-lease agreement between TAA and the appellant is unenforceable as the said lands is *wakaf* land, which is automatically vested in the Majlis — the sole trustee of all *wakaf* situated in the State of Terengganu. Therefore, the appellant does not have any right to sell, dispose and/or transfer the land to any third parties, including the respondent.

[59] The appellant submits, premised on its argument that the principal sub-lease agreement is unenforceable, that the SPA is also unenforceable, and is in contravention of the Administration of Islamic Law Enactment 1955 and/or the Administration of Islamic Religious Affairs (Terengganu) Enactment 1422H/2001M ('the 2001 Terengganu Enactment').

[60] Learned counsel for the appellant contends that said lands being *wakaf* land is not subject to any transfer because ss 63 and 64 of the 2001 Terengganu Enactment prohibit such transfers. The appellant's counsel submits that it is against the 2001 Terengganu Enactment for the appellant or the respondent to be the owner of the said lands, which must be vested under the Majlis only.

[61] Learned counsel for the appellant argues that for this reason, the appellant at all material times does not have the authority to transfer and/or sell the said lands to the respondent. He further argues that the bona fide purchaser argument will not succeed since there was no element of fraud or misrepresentation, and the rights/interests acquired by the respondent under the SPA was obtained by means of a void instrument.

[62] The respondent's position is that the Majlis as the sole trustee of the Chenderong Concession has the absolute right to make any agreement with third parties to lease out *wakaf* lands, including the said lands.

Analysis

[63] What is *wakaf* in the State of Terengganu? 'Wakaf' is defined in s 2 of the 2001 Terengganu Enactment as:

> 'wakaf' means any property from which its benefit or interest may be enjoyed for any charitable purpose whether as 'wakaf am' or 'wakaf khas' in accordance with Hukum Syarak, but does not include a trust which is defined under the Trustee Act 1949 [Act 208].
>
> 'wakaf am' means a wakaf that is created for a general of the charitable purpose in accordance with Hukum Syarak;
>
> 'wakaf khas' means a wakaf that is created for specified charitable purpose in accordance with Hukum Syarak;

[64] What is *Majlis Agama Islam dan Adat Melayu* (referred by the appellant in its submissions and in this judgment as 'the Majlis' and by the respondent in its submissions as 'MAIDAM')? *Majlis Agama Islam dan Adat Melayu* ('the Majlis') is a body established under s 4(1) of the 2001 Terengganu Enactment, which reads:

> 4 Establishment of the Majlis
>
> (1) There shall be a body to be known as the 'Majlis Agama Islam dan Adat Melayu' to aid and advise the Duli Yang Maha Mulia Sultan in matters relating to the religion of Islam.
>
> (2) Upon the commencement of this section, the Majlis Agama Islam dan Adat Melayu existing before such commencement by virtue of the previous Enactment shall be deemed to be the Majlis referred to in subsection (1).
>
> (3) Every right, authority, duty and liability, which before the commencement of this Enactment is vested in or charged on the previous Majlis shall, upon the commencement of this Enactment, vest in and be charged on the Majlis, insofar as they are not inconsistent with the provisions of this Enactment.

(4) Every description of property, movable or immovable, which before the commencement of this Enactment was vested in the previous Majlis shall, upon the commencement of this Enactment, vest in the Majlis without any conveyance, assignment or transfer.

[65] By virtue of s 4(2) of the 2001 Terengganu Enactment, the previous *Majlis Agama Islam dan Adat Melayu* existing before the 2001 Terengganu Enactment shall be deemed to be the Majlis referred to in s 4(1) of the 2001 Terengganu Enactment.

[66] Pursuant to s 63 of the 2001 Terengganu Enactment, the Majlis is the sole trustee of all *wakaf* situated in the State of Terengganu. Section 64 of the said Enactment states that all property subject to s 63 shall vest in the Majlis, for the purpose of the *wakaf*, *nazar am* or trust affecting the property, without any conveyance, assignment or transfer or in respect of immovable property upon registration under the written law relating to land. Sections 63 and 64 of the 2001 Terengganu Enactment read:

63 Majlis to be sole trustee of wakaf, nazar and trusts

Notwithstanding any provision to the contrary contained in any instrument or declaration creating, governing or affecting it, *the Majlis shall be the sole trustee of* —

(a) *all wakaf, whether wakaf am or wakaf khas*;

(b) all *nazar am*; and

(c) all trusts of every description creating any charitable trust for the support and promotion of the religion of Islam or for the benefit of Muslims in accordance with *Hukum Syarak*,

to the extent of any property affected by the wakaf, nazar am or trust and situated in the State of Terengganu.

64 Vesting of wakaf, nazar and trust property in Majlis

(1) All property subject to section 63 shall without any conveyance, assignment or transfer, and, in the case of immovable property, upon registration under the written law relating to land, vest in the Majlis, for the purpose of the wakaf, nazar am or trust affecting the property. (Emphasis added.)

[67] By virtue of s 4(4) of the said 2001 Terengganu Enactment, the Chenderong Concession — a *wakaf* which was vested in the previous Majlis under the Terengganu Enactment No 9 of 1963 — was upon the commencement of the 2001 Terengganu Enactment became vested in the current Majlis referred to in s 4(1) of the said 2001 Terengganu Enactment.

[68] Pursuant to s 66 of the 2001 Terengganu Enactment, the Majlis may receive income from *wakaf* property. Under s 66(2) the income of every *wakaf*

(other than *wakaf khas*) shall be paid into and form part of the fund of the Majlis. Section 66 reads:

66 Income from wakaf and nazar

(1) The income received by the Majlis from a *wakaf khas* shall be applied by it in accordance with the lawful provisions of such *wakaf khas*.

(2) The income of every *wakaf* other than *wakaf khas* and of every *nazar am* shall be paid into and form part of the Fund of the Majlis.

[69] Furthermore, the Majlis is empowered under s 8 of the Terengganu Enactment No 9 of 1963 to, among others, enter into contracts and transfer or otherwise dispose of any movable or immovable property vested in the Majlis. Section 8 states:

8 Powers of the Majlis

The Majlis may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description, and subject to the provisions of any written law affecting the same may convey, assign, surrender and yield up, charge, mortgage, demise, re-assign, transfer or otherwise dispose of, or deal with, any movable or immovable property vested in the Majlis upon such terms as the Majlis seems fit and in accordance with Islamic Law.

[70] We agree with learned counsel for the respondent that the Majlis being the sole trustee of *wakaf* lands in the Chenderong Concession retains full control of the lands and may lease out the lands to third parties. The Majlis receives tributes and/or income from leasing of the *wakaf* lands to third parties. This is borne out by the evidence of the subpoena witness from the Majlis, Puan Nurul Ain bt Nordin ('DW1'), during the trial of Suit 293 at the KL High Court. The excerpt of the DW1's testimony (encl 5: *rekod rayuan Bhg B/Jld* 2/p 77) is reproduced below:

Respondent's Counsel: Boleh, ok, Puan, setuju dengan cadangan saya bahawa MAIDAM [the Majlis] adalah pemegang Amanah untuk harta tanah Chenderong? Trustee for the wakaf lands.

DW1: Ya, pemegang Amanah tunggal.

Respondent's Counsel: *Tunggal, ok, so trustee. Dalam sebagai sole tunggal, MAIDAM [Majlis] boleh membuat apaapa perjanjian dengan pihak-pihak ketiga untuklease-out harta tanah wakaf?*

DW1: *Boleh*. (Emphasis added.)

(a) Is the SPA between the appellant and the respondent invalid and unenforceable under the 2001 Terengganu Enactment?

[71] The appellant's case is that the principle sub-lease agreement, the principle deed of assignment and the SPA are invalid and unenforceable because the leased blocks and the said lands are *wakaf* lands and the Majlis is the sole trustee of all wakaf lands in the State of Terengganu under 2001 Terengganu Enactment. Also, because the appellant does not have the authority to transfer the said lands to the respondent.

[72] It is an undisputed fact that the Majlis is the sole trustee of all *wakaf* lands situated in the State Terengganu pursuant to s 63 of the 2001 Terengganu Enactment.

[73] In order to determine whether the SPA is invalid and unenforceable pursuant to the 2001 Terengganu Enactment, this court must first, ascertain what did the appellant purchase from the TAA pursuant to the principal sub-lease agreement; and secondly, what did the appellant sell to the respondent under the SPA.

(i) What did the appellant purchase under principal sub-lease agreement?

[74] As discussed in section B above, the Majlis and Tengku Maimunah had leased the lands in the Chenderong Concession to Cindee under the original lease agreements for a period of 999 years, which was reduced under the reduction in lease agreement to 99 years. Following the reduction of the lease term, the lease of the lands under the original lease agreements will expire on 31 December 2084. Cindee then sub-leased the Chenderong Concession to TAA under the Cindee-TAA agreement for the unexpired lease term.

[75] TAA then sub-leased the leased blocks in the Chenderong Concession to the appellant for the unexpired lease term pursuant to the principal sub-lease agreement. It was an express provision in the principal sub-lease agreement that TAA shall execute or cause to be executed a deed of assignment in favour of the appellant assigning absolutely to the appellant all of TAA's rights, interests and titles in and to the leased blocks under the principal sub-lease agreement.

[76] TAA, the Majlis and the appellant then entered into the principle deed of assignment, where TAA assigned absolutely to and in favour of the appellant all its rights, interests, title, privileges and other equities in and to the leased blocks. The Majlis — the sole trustee of the Chenderong Concession — as the lessor of the leased blocks expressly gave its consent of TAA's assignment in its rights and interests etc in the leased blocks to the appellant.

[77] The appellant, in cl 2 of the principle deed of assignment, expressly covenanted to perform, fulfil and observe all and every of the stipulations, covenants and conditions contained in the original lease agreements and/or the principal sub-lease agreement, as revised, modified or amended by the Majlis from time to time and insofar as they are applicable to the appellant.

[78] Also, the appellant expressly declared in cl 3 of the principal deed of assignment that it shall be bound by the terms of the original lease agreements and/or the principal sub-lease agreement and shall indemnify TAA in respect of any breach of the terms and conditions stipulated therein insofar as it is applicable to the appellant.

[79] We find that it is clear that pursuant to the original lease agreements (as amended by the reduction in lease agreement), the Majlis and Tengku Maimunah had leased their respective shares in the Chenderong Concession to Cindee for a period of 99 years. It is equally clear from the terms of the principal sub-lease agreement and the principal deed of assignment that TAA had sold and assigned its rights and interests in the sub-lease of the leased blocks to the appellant for a term up to 31 December 2084. As discussed in section B above, Tengku Maimunah after entering into the lease agreement with Cindee had on 13 June 1961, gifted to the Commissioner (later known as 'the Majlis') and created a *wakaf* of her share in Chenderong Concession — which the Federal Court in *Haji Embong bin Ibrahim & Ors v Tengku Nik Maimunah Hajjah binte Almarhum Sultan Zainal Abidin* held was statutorily validated by the Wakaf Validating Enactment.

[80] Furthermore, we find that the Majlis did not sell, transfer and/or dispose its title in the Chenderong Concession to Cindee or TAA. Neither did TAA sell, transfer and/or dispose the Majlis' title in the said leased blocks to the appellant. This fact is confirmed by the subpoena witness from the Majlis, DW1, under cross-examination by the appellant's counsel during the trial of Suit 293. The excerpt of DW1's testimony (encl 5: *rekod rayuan Bhg B/Jld* 2/pp 88–89) is reproduced below:

> Appellant's Counsel: Puan, pada permulaan keterangan telah menyatakan bahawa pihak Majlis boleh lease, memajak tanah, did I hear you right? Betul?
>
> DW1: Betul.
>
> Appellant's Counsel: Kalau begitu, sebagai pemegang Amanah Tunggal, ianya telah diperintahkan secara persetujuan dalam perintah Mahkamah Syariah bahawa Majlis tidak boleh menjual hak milik, pindah milik, melupuskan hak milik ke atas tanah, setuju?
>
> DW1: Betul. Setuju, Yang Arif. Tanah Wakaf tidak boleh dipindah milik, dijual.

A Appellant's Counsel: Jadi kepada pihak Tis 'Ata, pihak Majlis bagaimana melupuskan hak kepada tanah Chenderong?

DW1: *At first place, Majlis tidak melupuskan kepada TAA*. TAA bertindak untuk memendekkan pajakan daripada pemajak asal, daripada Cindee.

B Appellant's Counsel: OK.

DW1: Tanah ini dipajakkan selama 999 tahun.

Appellant's Counsel: Ya.

C DW1: Ok. Selepas itu ada satu rundingan yang dibuat dan juga untuk memendekkan pajakan itu, diberikan kepada TAA, jadi 99 tahun. *So semua pemajak yang ada di Chenderong ini akan tamat pajakkannya adalah pada tahun 2084. Kecuali atau pemajak sahaja akan tamat pada tahun 2032, the rest is 2084*. (Emphasis added.)

D (ii) What was sold and purchased under the SPA?

[81] The appellant had sold its rights and interests in the said lands to the respondent under the SPA.

E

[82] What are the appellant's rights and interests in the said lands? They are the rights and interests in the said lands acquired by the appellant from TAA under the principal sub-lease agreement and the principal deed of assignment. The lands were originally leased by Cindee from the Majlis and Tengku F Maimunah respectively under the original lease agreements, then leased to TAA under the Cindee-TAA agreement.

[83] Therefore, what was sold by the appellant to the respondent under the SPA was its rights and interests to the said lands for the unexpired period of the G lease, ie up to 31 December 2084. It was not the ownership of or title to the said lands. As the appellant did not acquire ownership or title to the said lands under the principal sub-lease agreement and the principal deed of assignment, it would be legally impossible for it to sell and/or transfer the ownership or title in the said lands to the respondent.

H

Obligation under the SPA to pay tribute to the majlis

[84] Under the principal sub-lease agreement (at cl 11), the applicant is I obliged to pay 5% tribute to the Majlis and 5% to TAA if it successfully carries on mining activities in the leased blocks. Clause 11.1 of the principal sub-lease agreement reads:

> 11.1 Should SPPT [the Appellant] successfully carries out mining activities, SPPT agrees to contribute 10% of the gross value of the minerals mined payable to:

(a) 5% to be paid to the Majlis for the benefit of the beneficiaries of the Wakaf; and

(b) the other 5% to TAA.

[85] Additionally, Schedule 3, Appendix I, para 4 of the principal sub-lease agreement states the following tribute is payable by the appellant to the Majlis in respect of the timber in the leased blocks:

> Ringgit Three ($3/-) per sawmill ton of 64 cu. ft, irrespective of size of logs payable on a monthly basis to be paid direct by SPPT [the Appellant] to the Majlis for the benefit of the Wakaf.

[86] Moreover, the respondent had covenanted and undertook in cl 12.1 of the SPA that its shall at all times observe and perform and be subject to the conditions of the original lease agreements and/or the principal sub-lease agreement, including the payment of tributes that are currently applicable subject to the limitations in cll 11.1.3 and 11.1.4 of the SPA.

[87] DW1 confirmed that the tributes for the lands in the Chenderong Concession are still, to date, being paid annually by the appellant and/or TAA. The relevant excerpt from her testimony (at encl 5: *rekod rayuan Bhg B*/*Jld* 2/p 86 line 17) is reproduced below:

> Respondent's Counsel: Sejak, as far as your knowledge, of the facts are concerned, adakah SPPT atau Tis 'Ata membayar apa-apa faedah kepada Majlis, untuk tanah wakaf tersebut, sampai sekarang?
>
> DW1: Ada, Yang Arif.
>
> Respondent's Counsel: Mereka membayar tiap-tiap bulan sampai sekarang atau when was the last?
>
> DW1: Setiap tahun, Yang Arif.

[88] If title in the leased blocks and/or in the said lands had been sold, transferred or disposed by the Majlis to TAA and/or TAA to the appellant, the Majlis would not have the right to receive the tributes and/or other payments for the lands in the Chenderong Concession. However, as confirmed by DW1, the Majlis continues to receive the payments for the lands annually to date.

(b) Is the SPA invalid or unenforceable under the Syariah Court consent order?

[89] The Majlis filed a writ and statement of claim dated 06 July 2008 against TAA in the Kuala Terengganu Syariah Court (Kes Mal No 11300–007–0016–2008). As shown in the SSM company search results, the Majlis is one of the shareholders of TAA.

[90] Within a week of filing the action, the Syariah Court recorded a consent judgment between the Majlis and TAA on 13 July 2008. ('Syariah Court consent order'). The terms of the Syariah Court consent order is reproduced below:

SAYA PERINTAHKAN DENGAN PERSETUJUAN BERSAMA DI ANTARA PLAINTIF DAN DEFENDAN BAHAWA:

1. Tanah yang dikenali sebagai Tanah 'Konsensi Chenderong' adalah merupakan tanah wakaf yang diikrarkan oleh Y.M. Almarhum Tengku Chik Bin Tengku Abd Rahman pada 22hb. Februari 1941 bersamaan 25hb. Muharram, 1350 dan Y.M. Almarhumah Tengku Nik Maimunah Hajjah Binti Almarhum Sultan Zainal Abidin pada 13hb. Jun 1961 bersamaan 29hb. Zulhijjah 1380;

2. Ianya merupakan harta wakaf ke atas tanah itu sendiri beserta hasilnya dan berkuatkuasa pada tarikh iannya diikrarkan sebagaimana peruntukkan 'Islamic Wakaf Validity Enactment 1972', Enakmen No. 10/1972 Negeri Terengganu;

3. Majlis Agama Islam dan Adat Melayu Terengganu (Plaintif) adalah Pemegang Amanah Yang Tunggal bagi tanah wakaf dan keseluruhan Tanah Konsensi Chenderong yang terletak hak kepada Plaintif sebagaimana Seksyen 63 dan Seksyen 64 Enakmen Pentadbiran Hal Ehwal Agama Islam (Terengganu) 1442H/2001M, Pentadbiran Hal Ehwal Agama Islam (Terengganu) 1995 dan semenjak Enakmen No. 4/1955 lagi;

4. *Tanah Konsensi Chenderong tidak boleh dipindah hak, serah hak milikan atau pindah milikan melainkan sebagaimana yang diperuntukan melalui hukum syarak dan melalui cara-cara yang dibenarkan oleh Enakmen Pentadbiran Hal Ehwal Agama Islam (Terengganu) 1442H/2001M*;

5. Bahawa Plaintif dan Defendan dihalang daripada melanggar fatwa yang dikeluarkan oleh Mufti Negeri Terengganu Gazette GN 28/1971 yang menegaskan bahawa tanah Konsensi Chenderong adalah merupakan tanah wakaf yang tidak boleh dipindah milik dan halangan ini juga tertakluk kepada mana-mana pihak ketiga;

6. Perjanjian bertarikh 21.08.1987 di antara Defendan dan Mars Equity Sdn. Bhd. dan Perjanjian bertarikh 23.08.1990 di antara *Defendan dan SPPT Development Sdn. Bhd. atau di antara Defendan kepada mana-mana pihak ketiga atau lanjutan susur jalur daripadanya ke atas Tanah wakaf Konsensi Chenderong adalah tidak sah atau terbatal dari awalnya kerana Plaintif sebagai Pemegang Amanah Yang Tunggal ke atas Tanah wakaf Konsensi Chenderong tidak terlibat dan/atau tidak boleh menjual hakmilik (title), pindahmilik melupuskan hakmilik ke atas tanah Konsensi Chenderong tersebut*;

7. *Apa-apa perjanjian jual beli, jualbeli pajakan, serah hak pajakan, pindahmilik, serah hakmilikan (title), (jika ianya membawa maksud) Pemegang Amanah Yang Tunggal wakaf yang terletak hak kepada Plaintif*

dinafikan secara keseluruhan atau yang bertentangan dengan maksud Seksyen 63 dan Seksyen 64 Enakmen Pentadbiran Hal Ehwal Agama Islam (Terengganu) 1442H/2001M atau mana-mana Enakmen yang berkuatkuasa semasa itu, maka apa-apa transaksi sedemikian adalah tidak sah dari awalnya dan/atau terbatal dengan sendiri dari awalnya serta kesuluruhan susur jalur di bawahnya.

8. *Defendan dihalang daripada mendaftarkan atau menandatangani Borang Pindahmilik atau menyerahkan milikan, pindah hak milikan, tanah wakaf Konsensi Chenderong kepada mana-mana pihak ketiga jika hakmilik dikeluarkan di bawah Kanun Tanah Negara oleh Pihak Berkuasa Berkenaan kelak*, sebagaimana menepati Seksyen 63 dan Seksyen 64 Enakmen Pentadbiran Hal Ehwal Agama Islam (Terengganu) 1442H/2001M;

9. *Perintah halangan pendaftaran pindah hak milikan (title) kepada Defendan dan/atau mana-mana pihak ketiga sebagaimana Perintah No. 8 di atas adalah juga tertakluk kepada Plaintif*;

10. Plaintif dibenarkan membuat apa-apa permohonan tambahan berkaitan dengan tanah wakaf Konsensi Chenderong;

11. Kos bagi tindakan ini di tanggung oleh pihak masing-masing; dan

12. Plaintif dibenarkan memohon apa-apa relief yang Mahkamah fikirkan adil dan suai manfaat. (Emphasis added.)

[91] Essentially, the Syariah Court consent order prohibits the transfer of title in the Chenderong Concession by the Majlis to any third party. This is because under the 2001 Terengganu Enactment, the Majlis is the sole trustee of the Chenderong Concession because they are *wakaf* lands. The Majlis is prohibited from executing or registering any memorandum of transfer transferring the title in the *wakaf* lands in the Chenderong Concession to any third party.

[92] Paragraph 6 of the Syariah Court consent order states that the principal sub-lease agreement between TAA and the appellant is null and void because the Majlis as the sole trustee of Chenderong Concession cannot sell or transfer the title in the Chenderong Concession.

[93] We find that the order in para 6 of the Syariah Court consent order is clearly wrong since based on the terms of the principal sub-lease agreement neither the Majlis nor TAA had sold or transferred the title in the Chenderong Concession to the appellant. As discussed above, TAA had sub-leased its rights and interests in the leased blocks to the appellant under the principal sub-lease agreement.

[94] Moreover, the Syariah Court does not have the jurisdiction to determine the validity and enforceability of a contract under the law of

contracts. The SPA is a contract between the appellant and the respondent who are both non-Muslims, and who do not have the right of appearance in the Syariah Court. This is confirmed by DW1 under cross-examination by the appellant's counsel (at encl 5: *rekod rayuan Bhg B*/*Jld* 2/p 90):

> Appellant's Counsel: Mana ada tulis di sana sekiranya hak MAIDAM dinafikan, dalam perintah ini? Kamu setuju, perintah yang sangat jelas. Dia kata 'Perjanjian bertarikh ini di antara Defendan iaitu Tis 'Ata dengan SPPT adalah tidak sah dan terbatal'. Straight-forward. Dia tak ada subject to, tak ada tertakluk kepada sekiranya hak MAIDAM dinafikan dan sebagainya, setuju?
>
> DW1: Saya tak pasti, Yang Arif. *Sebab sefahaman saya. Mahkamah Syariah tidak mempunyai bidang kuasa untuk menentukan suatu perjanjian di bawah undang-undang kontrak itu sama ada batal ataupun tidak* kerana ia concern ... (Emphasis added.)

[95] DW1 also confirmed that the Majlis has not enforced the Syariah Court consent order as at date of the trial of Suit 293 — which was 14 years after the date of the said consent order.

[96] As discussed above, the appellant did not sell, dispose or transfer the title in the Chenderong Concession to the respondent under the SPA. How could it do so when it does not have title to or ownership of the Chenderong Concession or the said lands? What the appellant had sold to the respondent under the SPA was its rights and interests in the sub-lease of the said lands under the principal sub-lease agreement and the principal deed of assignment for the unexpired period of the lease.

[97] We find that the sale and purchase of the appellant's rights and interests in the sub-lease of the said lands did not breach nor was it in contravention of ss 63 and 64 of the 2001 Terengganu Enactment since the Majlis remains the sole trustee of the Chenderong Concession — the Majlis' title in the said lands has not been transferred to the respondent or any other third party.

[98] Furthermore, the 2001 Terengganu Enactment does not contain any provisions that prohibit the Majlis from leasing *wakaf* lands or generating income from *wakaf* lands. In fact, s 66 of the 2001 Terengganu Enactment explicitly states that the income accrued by the Majlis from every *wakaf*, with the exception of *wakaf khas*, shall be paid into and form part of the Fund of the Majlis.

[99] Therefore, the question of illegality does not arise under both the 2001 Terengganu Enactment and the Syariah Court consent order. Consequently, we conclude that the principal sub-lease agreement, the principal deed of assignment, and the SPA are valid and enforceable.

Findings on issue (a)

[100] Accordingly, for all these reasons, we agree with the KL High Court in Suit 293 that the judgment of the KT High Court in Suit 13 is valid and binding.

Issue (b): Whether the Syariah Court consent order ought to be taken into consideration by the KL High Court in Suit 293?

[101] The consent judgment reached between the Majlis and TAA was recorded by the Syariah Court in the Syariah Court consent order on 13 July 2008, approximately two years before Suit 13 had proceeded to trial in the KT High Court. The appellant's witness, Dato' Sri Yong Tu Sang ('PW1') confirmed under cross-examination in Suit 293 that the appellant knew about the Syariah Court consent order. The records show that the appellant had received a copy of the Syariah Court consent order on 29 July 2008. However, the appellant did not raise the Syariah Court consent order during the pendency of the trial in Suit 13.

[102] The Supreme Court in *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189; [1995] 3 CLJ 783; [1995] 3 AMR 2559 held that issues which might have been but were not, fall under the doctrine of res judicata, specifically the doctrine of estoppel per rem judicatum.

[103] On the raising of new issues in subsequent litigation where the subject matter and the parties are the same as in a previous litigation, the Federal Court in *Lin Wen-Chih & Anor v Pacific Forest Industries Sdn Bhd & Anor* [2023] 5 MLJ 422; [2023] 8 CLJ 671; [2023] 6 AMR 561 held:

> [45] On the new issues raised, we have highlighted that we agreed with the findings and decision of the Court of Appeal that those new issues, albeit being newly raised, are issues which fall under the category where '... *the plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time*' (per Sir James Wigram, VC in *Henderson v Henderson* above). (Emphasis added.)

[104] In this case, the learned High Court judge had examined the Suit 13 order and pleadings and cause papers in Suit 293 before arriving at his finding that the appellant could have with reasonable diligence brought the Syariah Court consent order in Suit 13 and raised the issue in Suit 13 (as it did later in Suit 293) and could have contended, that the SPA between the appellant and

the respondent is null and void by reason of the Syariah Court consent order. However, it did not do so — either deliberately or due to negligence or inadvertence.

Findings on issue (b)

[105] Therefore, for these reasons, we find that the KL High Court did not fall into error by holding that the Syariah Court consent order ought not to be taken into consideration in Suit 293.

Issue (c): whether the principle of res judicata is applicable to Suit 293?

[106] It is the appellant's case that the principle of res judicata is not applicable to Suit 293 due to the differences in the nature of the said Suit with Suit 13, the issues to be decided and the reliefs sought.

[107] The appellant had filed Suit 13 in the KT High Court for an order terminating the SPA due to the respondent's failure to pay the balance purchase price within the time stipulated in the SPA. As discussed above, the KT High Court found that the appellant failed to prove that the respondent had breached the SPA, and dismissed the appellant's claim in Suit 13. Its appeal to the Court of Appeal against the KT High Court's decision failed and its application for leave to appeal to the Federal Court was dismissed.

[108] After having exhausted all avenues of appeal against Suit 13, the appellant filed Suit 293 to impugn the KT High Court order in Suit 13 where it sought, inter alia, for a declaration and order that court order in Suit 13 was illegal, null and void, and must be set aside *ex debito justitiae*. The appellant also sought for an order that the SPA be terminated.

[109] As held by the Supreme Court in *Asia Commercial Finance*, which decision was cited with approval by the Federal Court in *Kerajaan Malaysia v Mat Shuhaimi bin Shafiei* [2018] 2 MLJ 133; [2018] 3 CLJ 1; [2018] 1 AMR 837, two are kinds of estoppel *per rem judicatum*: the first is 'cause of action estoppel' and the second is 'issue estoppel'. The Supreme Court in *Asia Commercial Finance* explained both kinds of estoppel as follows:

> *The cause of action estoppel arises when rights or liabilities involving a particular right to take a particular action in court for a particular remedy are determined in a final judgment and such right of action, ie the cause of action, merges into the said final judgment*; in layman's language, *the cause of action has turned into the said final judgment*. The said cause of action may not be relitigated between the same parties because it is res judicata.
>
> ...

> On the other hand, the *issue estoppel literally means simply an issue which a party is estopped from raising in a subsequent proceeding*. However, the *issue estoppel, in a nutshell, from a consideration of case law, means in law a lot more, ie that neither of the same parties or their privies in a subsequent proceeding is entitled to challenge the correctness of the decision of a previous final judgment in which they, or their privies, were parties*. This sounds like explaining a truism, but it is the corollary from that statement that is all important and that could have given birth to the controversies alluded to above; the corollary being that neither of such parties will be allowed to adduce evidence or advance any argument to contradict such decision. In this respect, we respectfully agree with Peter Gibson J in *Lawlor v Gray* [1984] 3 All ER 345 at p 350, who said: '*Issue estoppel … prevents contradiction of a previous determination, whereas cause of action estoppel prevents reassertion of the cause of action*'. (Emphasis added.)

[110] In this case, the appellant and the respondent were both parties to Suit 13, and the appellant in Suit 293 is seeking to challenge the correctness of the KT High Court's order in Suit 13.

[111] Premised on issue estoppel, neither the appellant nor the respondent or their privies are entitled to challenge the correctness of the KT High Court's judgment in Suit 13, which is the final binding judgment on the issue of the termination of the SPA.

[112] We find that there is no difference in the nature of the Suit 13 and Suit 293 since there was no illegality or breach of the 2001 Terengganu Enactment. There was no disposal or transfer of the title of the said lands by the Majlis pursuant to the original lease agreements, the principal sub-lease agreement or the SPA. In fact, DW1 confirmed that the Majlis still receives payments from the appellant and TAA annually for the lands in the Chenderong Concession.

[113] Additionally, we find that cause of action estoppel also exists since the appellant's and the respondent's rights and remedies in respect of the SPA had been determined in the KT High Court's final judgment in Suit 13 and the cause of action had merged into the said final judgment.

Findings on issue (c)

[114] For this reasons, we agree with the learned KL High Court judge that the principle of res judicata is applicable in Suit 293 and the appellant is estopped from re-litigating the issue in respect of the termination of the SPA and in bringing an action to challenge the KT High Court order in Suit 13, which a final binding judgment.

Issue (d): Is Suit 293 an abuse of the court's process?

[115] Dissatisfied with the judgment of the KT High Court in Suit 13 and having exhausted its avenues of appeal, the appellant sought to re-litigate its cause of action in respect of the termination of the SPA with the respondent.

[116] We find that the appellant's action in attempting to re-litigate a matter — which a court had issued a final binding judgment — is an abuse of process of court. As held by the Supreme Court in *Asia Commercial Finance*:

> It is particularly important to bear in mind the question of the public policy that there should be finality in litigation in conjunction with the exploding population; the increasing sophistication of the populace with the law and with the expanding resources of the courts being found always one step behind the resulting increase in litigation.

[117] The Federal Court in *Lin Wen-Chih* cited with approval the following statement by Lord Upjohn's in the House of Lord's decision in *Carl-Zeiss-Stiftung v Rayner and Keeler Ltd and Others (No 2)* [1966] 2 All ER 536; [1967] 1 AC 853 that:

> The broader principle of res judicata is founded on the twin principles so frequently expressed in Latin that *there should be at an end to litigation* and *justice demands that the same party shall not be harassed twice for the same cause*. (Emphasis added.)

[118] It would be contrary to public policy and an abuse of the court's process if litigants are allowed to re-litigate final binding judgments, which they are not happy with. It would result in the same party being sued more than once for the same cause, there will be no end to litigation and the court's overburdened machinery will collapse under the weight of such re- litigation by every dissatisfied litigant.

Findings on issue (d)

[119] For the above reasons, we find that the appellant's action in Suit 293 is an abuse of the court's process.

DECISION

[120] Accordingly, for the reasons above, we dismiss the appellant's appeal.

[121] Costs in the sum of RM30,000 to be paid by the appellant to the respondent, subject to allocatur.

Appellant's appeal dismissed with costs of RM30,000 to be paid by appellant to respondent, subject to allocatur.

Reported by Dzulqarnain Ab Fatar